

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:  
PETITION OF SHANTA RAMSON, ESQ.,**

Petitioner

Shanta Ramson

For the Petitioner

Board of Appeals Case No. S-2634  
(OZAH Referral No. 05-25)

Sandra Youla, Zoning Analyst,  
Maryland-National Capital Park & Planning  
Commission

Martin Klauber, People's Counsel

Neither in Support of Nor in Opposition  
to the Petition

Before: Françoise M. Carrier, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

Petition S-2634, filed December 22, 2004, requests a special exception under Section 59-G-2.29 for a major home occupation, to be located in Petitioner's residence at 4705 Sandy Spring Road, Burtonsville, MD 20866, known as Lot P1, Block A, New Birmingham Manor subdivision, Tax Account No. 160500273774, in the R-200 Zone. Petitioner, Shanta Ramson, Esq., also seeks a waiver of a side parking lot setback requirement under Section 59-E-2.83(b).

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated September 27, 2005, recommended that the Hearing Examiner (a) convene the public hearing; (b) discuss with the applicant the deficiencies of the application and parking waiver request as noted in the staff report; (c) direct the applicant to rectify the deficiencies by making new submissions by a fixed date; (d) inform the applicant that review will be based upon what is in the record by the fixed date; and (e) inform the applicant that absent new submissions, the application would be denied because the applicant currently has not met her burden of proof and has not met certain technical requirements, as discussed in the staff report.<sup>1</sup> See Ex. 22. The Montgomery County Planning Board did not consider this petition.

On February 3, 2005 the Board of Appeals ("Board") scheduled a public hearing in this matter for April 15, 2005, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was later postponed to September 30, 2005 at Petitioner's request, to allow her to make changes to her plans as recommended by Technical Staff. A public hearing was convened after proper notice on September 30, 2005, at which Petitioner presented testimony and other evidence in support of the proposed special exception, and Technical Staff presented testimony and other evidence concerning deficiencies in the application. The record was held open for an extensive period of time to permit Petitioner to make the necessary changes in her site plan and other documentation, and to provide time for Technical Staff review. Following extensive revisions to Petitioner's site plan and other documentation, Technical Staff submitted a Supplemental Staff Report on January 30, 2006, recommending *approval* with conditions. See Ex. 30. By Order

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<sup>1</sup> The Staff Report and supplemental report have been liberally paraphrased and cited in Part II of this report.

dated March 15, 2006, the Hearing Examiner extended the time for submission of her report by four weeks, from March 20, 2006 to April 17, 2006.<sup>2</sup>

## **II. BACKGROUND**

For the convenience of the reader, background information is grouped by subject matter.

### ***A. The Subject Property and Neighborhood***

The subject property consists of approximately 36,900 square feet of land located at 4705 Sandy Spring Road in Burtonsville, on the south side of Sandy Spring Road, approximately 180 feet west of its intersection with Birmingham Drive and 1,500 feet west of the border between Montgomery and Prince George's Counties. Sandy Spring Road, at this location, is a four-lane, divided Major Highway with a 120-foot right-of-way. The general location of the subject property may be seen on the vicinity map on the next page.

The subject property is classified under the R-200 Zone (Residential, One-Family Detached). It is rectangular and mostly flat, with about 168 feet of frontage on Sandy Spring Road. The property is developed with a brick and frame house with walkout basement, rear deck, and one-car attached garage, as well as a driveway from Sandy Spring Road and a rear parking area that is irregularly shaped and without striping. The driveway varies in width from about 21 feet to 26 feet, and has an apron about 28 feet wide. There is a stepped brick walkway leading from the driveway to the front door, and a paved walkway leading from the rear parking area to the back deck. The property has a short stretch of fence along the middle of the rear property line, a row of Leland Cypress trees that are about five feet tall along the western property line and part of the southern property line, and other trees and landscaping throughout the property. Outdoor flood lighting is installed at various points around the house, with additional ground lighting along the brick walkway to the front door.

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<sup>2</sup> The extension was intended to be for three weeks, but due to a typographical error, the date was entered as April 17 rather than April 10.

### Area Map, excerpted from Staff Report



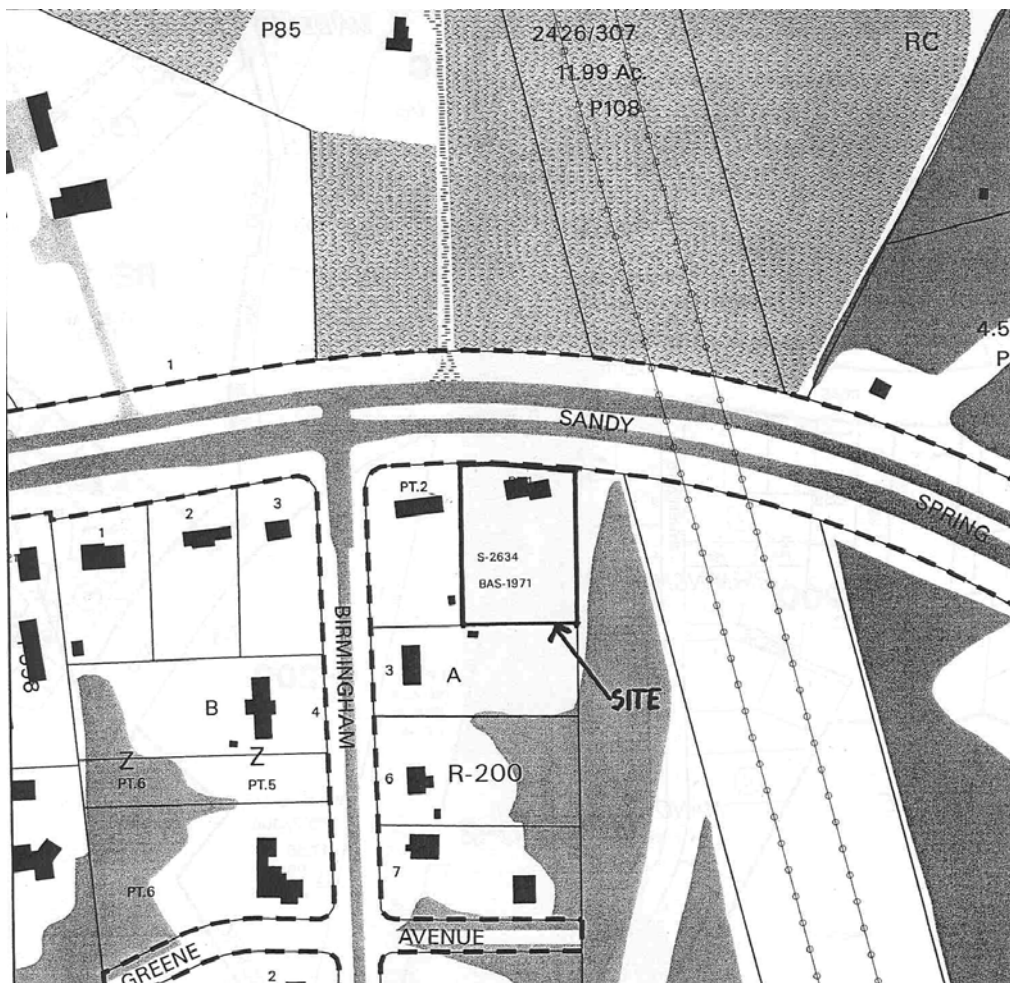
The subject property abuts two single-family detached homes in the R-200 Zone, one to the west and the other to the south/southwest. Confronting across the 160-foot right-of-way of Sandy Spring Road, to the north, are single-family homes on very large acreage in the Rural Cluster Zone (an aerial photograph attached to the Staff report suggests that some of this acreage may be in agricultural use). To the east, the subject site abuts undeveloped property that was classified under the PD-2 Zone

as part of a substantial rezoning of land related to the nearby Fairland Golf Course. The particular area of land abutting the subject property is not slated for construction under the Development Plan that was approved as part of the rezoning. This is due, in all likelihood, to its very small size and narrow shape.

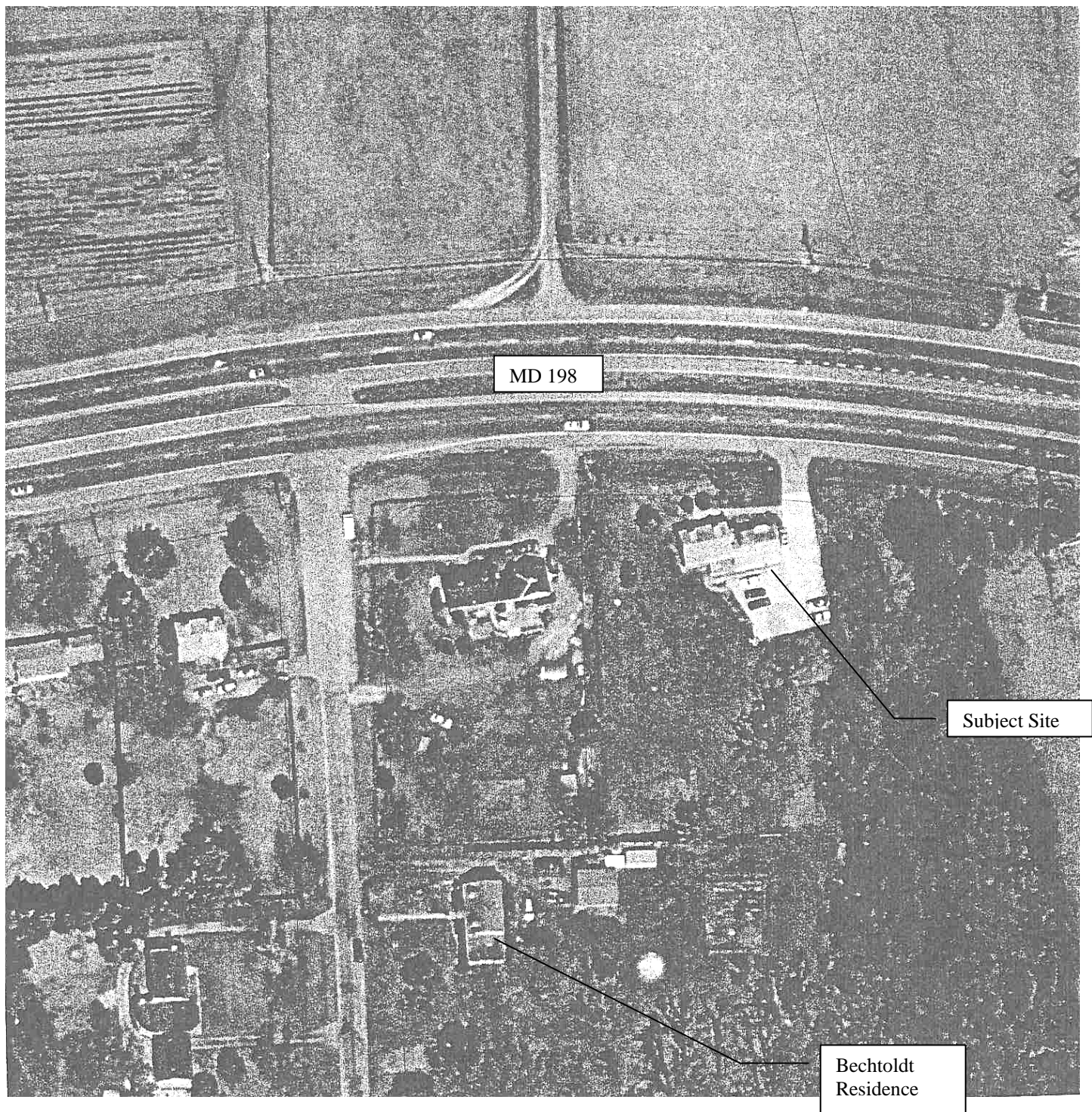
Technical Staff describes the general neighborhood of the site as including properties fronting on both sides of Sandy Spring Road, between McKnew Road on the west and the PEPCO transmission lines on the east, as well as all properties fronting on Birmingham Drive and Greene Avenue. Land uses in the general neighborhood consist primarily of single-family homes in the R-200 and RC Zones, as well as undeveloped land.

The relationship of the subject property to surrounding land uses may be seen on the vicinity map on the next page and the aerial photograph that follows.

#### **Vicinity Map, excerpted from Staff Report**



**Aerial Photograph, excerpted from Staff Report**



Photographs of the subject property and nearby land uses follow.

**Front of Residence on Subject Property, Ex. 9(a) top photo**



**Front of Subject Property and View West along MD 198, Ex. 9(b) bottom photo**



**View of Parking Area from MD 198, Ex. 9(c) bottom photo**



**Rear of Residence on Subject Property, Ex. ((d) to photo**



### ***B. Master Plan***

Technical Staff reports that the nothing in the *Approved and Adopted Fairland Master Plan (1997)* ("Master Plan") precludes approval of the proposed use. See Ex. 22 at 4, 16; Ex. 30 at 6.

### ***C. Proposed Use***

Petitioner proposes to continue operating a private law office from the subject site, as she has done at this location – without a special exception – for several years. Proposed hours of operation are 8:30 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturdays, although Petitioner does not expect Saturday appointments to be routine. Clients are seen by appointment only. Client appointments typically are scheduled no early than 10:00 a.m., but Petitioner requests approval to schedule appointments as early as 9:00 a.m. if necessary. The last appointment generally begins no later than 5:00 p.m., but Petitioner requests approval to schedule appointments starting later than 5:00 p.m. if necessary. The last appointment would conclude no later than 7:00 p.m. Appointments are scheduled for half-hour slots, resulting in no more than 12 appointments per weekday and no more than four on Saturday. Petitioner reports that in practice, she has five to ten appointments per day. Ms. Ramson proposes two non-resident employees to assist with legal and administrative work. They would be on site from 8:30 a.m. to 5:30 p.m., for the most part, but at times might stay as late as 7:00 p.m. Regarding deliveries, Petitioner agreed to a condition limiting the use to a maximum of two deliveries per day, exclusive of mail and normal residential garbage/recycling pick-up. She noted that she only receives deliveries from the types of delivery services that typically serve residential uses, so that element has been incorporated in the proposed conditions of approval.

Ms. Ramson states that part of her legal practice consists of acting as court-appointed attorney to evaluate whether an elderly person needs a guardian and/or conservator, and acting as appointed guardian/conservator, as well as personal representative for the deceased. She states that her elderly clients are seen at their places of residence. Ms. Ramson also practices in other areas of law such as personal injury and immigration, which involve meeting with clients at her office. She notes, however, that she generally has only two or three office meetings with each client. Most

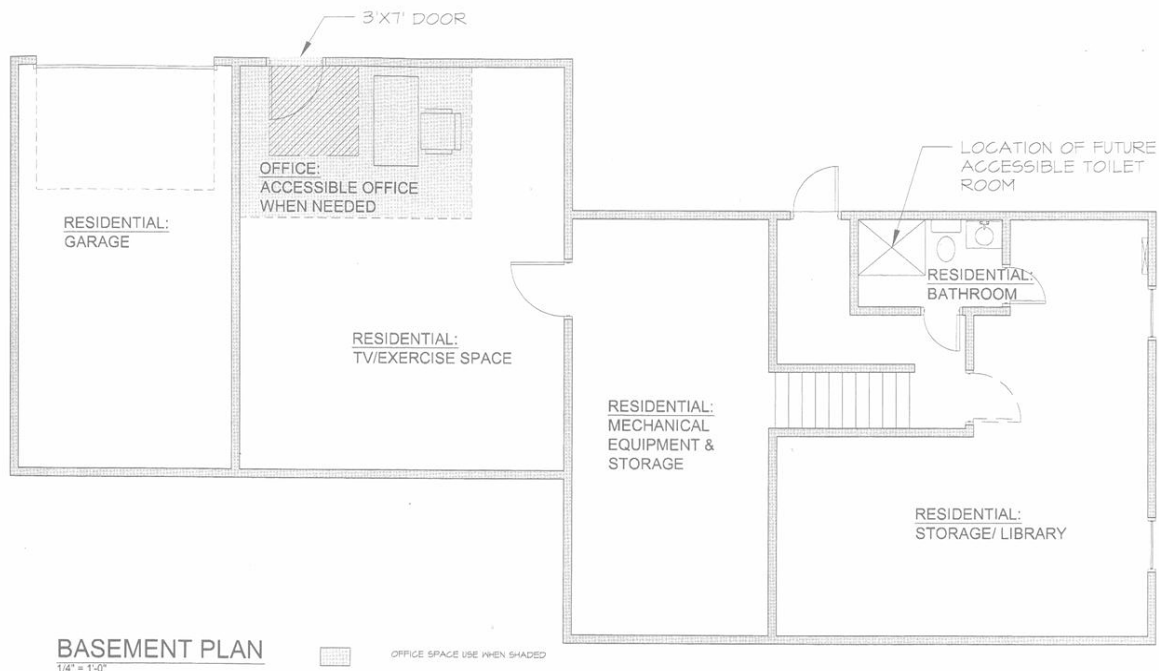
business is conducted by mail, e-mail or telephone, or in court or at administrative offices. See Ex. 27(a) at 2 (page numbers added by Hearing Examiner for ease of reference).

Ms. Ramson's home has three floors. The second floor, which has a much smaller footprint than the other two, is devoted entirely to residential use. Submitted floor plans demonstrate that the office use would occupy approximately 772 square feet, which represents about 20 percent of the total floor space of the home, significantly less than the 33 percent permitted. Petitioner uses what would normally be the living room on the first floor as a waiting room/administrative work area, and two first-floor bedrooms serve as offices. A bathroom on the first floor is used in connection with the office, as well as two closets. One of the offices has a refrigerator and coffee maker, and the copy/mail area has a water cooler, so there is no need for the residential kitchen to be used for office purposes.

Ms. Ramson does not propose to actually carry out any interior changes, although her floor plan designates space on the ground level for a "future" handicapped-accessible office and bathroom, and these are included in the calculation of 772 square feet devoted to office use. See Ex. 30(c). As may be seen below, these spaces are described as "Accessible Office When Necessary" and "Location of Future Accessible Toilet Room," respectively. A potential need for such facilities to satisfy requirements of the Americans with Disabilities Act ("ADA") was raised by Technical Staff in the first Staff Report, Exhibit 22. During the hearing, the Hearing Examiner directed Ms. Ramson to submit, following the hearing, either revised plans showing compliance with the ADA, or evidence to substantiate a claim that compliance is not "readily achievable" (a phrase used in ADA regulations) and therefore is not required. Ms. Ramson's post-hearing submissions suggest that she was advised by her architect that she is required to comply with the ADA because she proposes a business that is open to the public. It is not within the Board of Appeals' purview to assess or enforce compliance with the ADA, although compliance with all applicable laws, including the ADA, is a standard condition of approval for special exceptions. The question of whether Ms. Ramson must actually install a handicapped-accessible office and bathroom will be determined by the Department of Permitting Services ("DPS") when Petitioner applies for a use and occupancy permit. To ensure that this question is addressed, the

recommended conditions of approval require Ms. Ramson to apply for a use and occupancy permit, submit a copy of the permit to the Board for its records, and indicate in writing whether DPS required her to actually build the handicapped-accessible office and bathroom as part of the permitting process.<sup>3</sup>

**Floor Plan Excerpt from Ex. 30(c).**



The only exterior changes Ms. Ramson proposes involve striping and screening for the parking lot, which are discussed in a separate section. Petitioner does not propose any signage, as she prefers to rely on referrals and does not want walk-in business.

<sup>3</sup> Ms. Ramson objects to a condition requiring her to obtain a use and occupancy permit. See Ex. 31. She maintains that during the hearing, it was agreed that such a permit is not required for this home occupation. On this point, however, Ms. Ramson is mistaken. This issue was discussed at the hearing, with no clear resolution. Tr. at 78-85. Section 59-A-3.22 of the Zoning Ordinance states that "Before any building, structure or land can be used for or converted to a special exception use, [DPS] must issue a use-and-occupancy permit certifying compliance with the requirements, representations and conditions contained in the opinion of the board." The Hearing Examiner noted during the hearing that she had been told by DPS personnel that they do not require use and occupancy permits for home occupations, because it is not considered a change of use. Technical Staff reported, however, that DPS staff informed her that all special exceptions do require a use and occupancy permit. The Hearing Examiner plainly stated that if the special exception is granted, it will be incumbent upon Ms. Ramson to find out from DPS whether or not a use and occupancy permit is required. Tr. at 82-83. Because the plain language of the Zoning Ordinance suggests that it is required, the Hearing Examiner has included it as a recommended condition of approval. If the special exception is granted and DPS informs Ms. Ramson that a use and occupancy permit is not required, she would be well advised to get that determination in writing and submit it to the Board in lieu of a use and occupancy permit.

### ***D. Site Entrance and Parking***

Site entrance. The subject site has a driveway that connects to Sandy Spring Road (MD 198), which is a four-lane divided highway with a grassy median, paved shoulders, a drainage ditch along the property, no sidewalks, no tree panels and no curbs. The actual right-of-way is 160 feet wide, although the recommended width in the Master Plan is 120 feet. No parking is allowed along the subject property's frontage, per posted restrictions. Because of the median, only right-in/right-out turning movements are possible at the driveway entrance.

The existing driveway entrance is 19 feet wide, with turning radii of approximately 10 feet.<sup>4</sup> The State Highway Administration ("SHA") has established standards for a commercial driveway that normally would apply to the proposed use. These standards require a minimum 25-foot width for a driveway entrance, extending at least 30 feet back from the curb return, and 30-foot turning radii. See SHA letter, Ex. 27(j). However, SHA has granted a request from Ms. Ramson to waive these standards and permit her to keep the existing entrance, based on several factors: her law office is a low traffic generator, with vehicles typically entering and exiting one at a time; there is a ten-foot-wide shoulder on MD 198; and sight distances to the left (west) exceed SHA standards. See *id.* Thus, eastbound vehicles trying to enter the driveway should be able to wait on the shoulder for outbound vehicles to exit. See *id.* SHA imposed one condition, which is the removal of a large, brick mailbox structure located near the entrance, about two feet from the edge of the roadway pavement. See *id.* Mailboxes in state rights-of-way must be placed on a breakaway-type post or support. See *id.* Per her revised Statement of Operations, Petitioner has agreed to remove the mailbox. See Ex. 27(a) at 4.

Technical Staff believes that the existing 19-foot driveway is adequate to provide safe access for two-way traffic entering and leaving the subject site. See Ex. 30 at 3.

Number of parking spaces. The proposed use requires a minimum of eight on-site parking spaces: three for the residential use, two for clients (based on the Statement of Operations, which anticipates up to two clients within a one-hour period), two for the two non-resident employees, and one

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<sup>4</sup>As noted earlier, the driveway apron is 28 feet wide, measured from curb to curb at the widest point. For SHA purposes, however, the width apparently is measured further back, excluding the curved part of the entrance.

additional space for deliveries, since on-street parking is not permitted. As shown on the submitted Site Plan, Exhibit 30(a), reproduced on the next page, Petitioner proposes to provide one space inside her garage, six spaces (including a handicapped-accessible space) in a parking area behind and to the side of the house, and one space alongside the house, between the house and the driveway, for residential use. She intends to identify the parking spaces with appropriate striping and signage. Technical Staff indicates that the standard perpendicular parking spaces shown on the Site Plan meet the minimum dimension requirements established in the Zoning Ordinance, and that the handicapped-accessible space meets the minimum requirements of the ADA Accessibility Guidelines. Ex. 30 at 4.

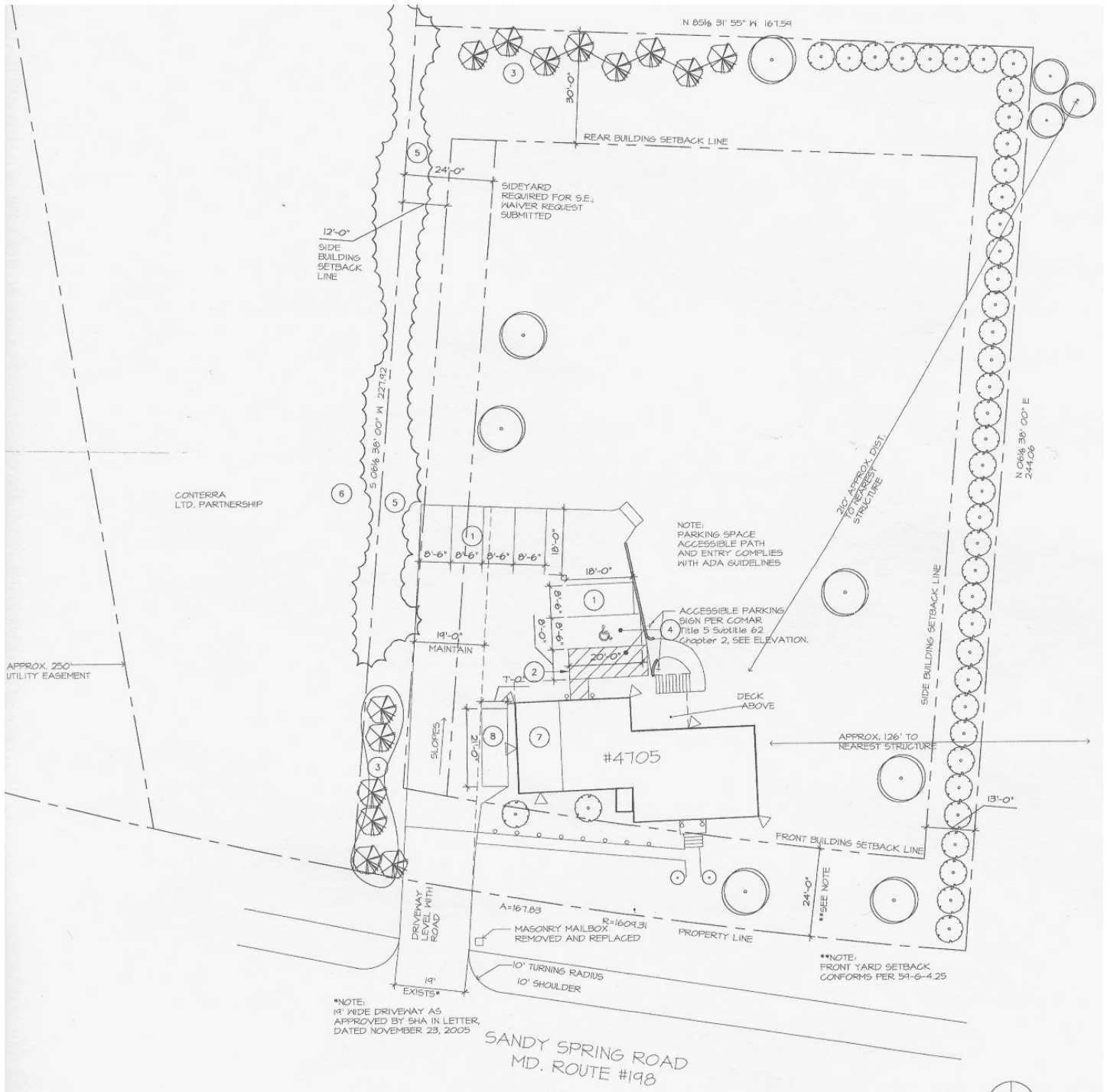
### Site Plan Notes, from Ex. 30(a)

#### NOTES

- ① 8'6"X18' PARKING SPACE, TYP. (TOTAL OF 5)
- ② 3'-0" WIDE MIN. DISABLED ACCESSIBLE ENTRY PATH AND ENTRY
- ③ LANDSCAPE SCREENING FOR PARKING
- ④ 8'-6"X20' VAN ACCESSIBLE PARKING SPACE AND 8'X18' ADJACENT LOADING AREA
- ⑤ EXISTING MATURE TREE SCREENING
- ⑥ NON-BUILDABLE PARCEL REMNANT
- ⑦ GARAGE PARKING SPACE
- ⑧ 7'X21' PARALLEL PARKING SPACE, FOR RESIDENTIAL USE

"PARKING SPACES FOR HANDICAPPED PERSONS SHALL BE PROVIDED IN ACCORDANCE WITH THE STANDARDS SPECIFIED IN THE MARYLAND BUILDING CODE FOR THE HANDICAPPED AS CONTAINED IN THE CODE OF MARYLAND REGULATIONS 05.01.07, DATED SEPTEMBER 5, 1980, AND AS SUBSEQUENTLY AMENDED."

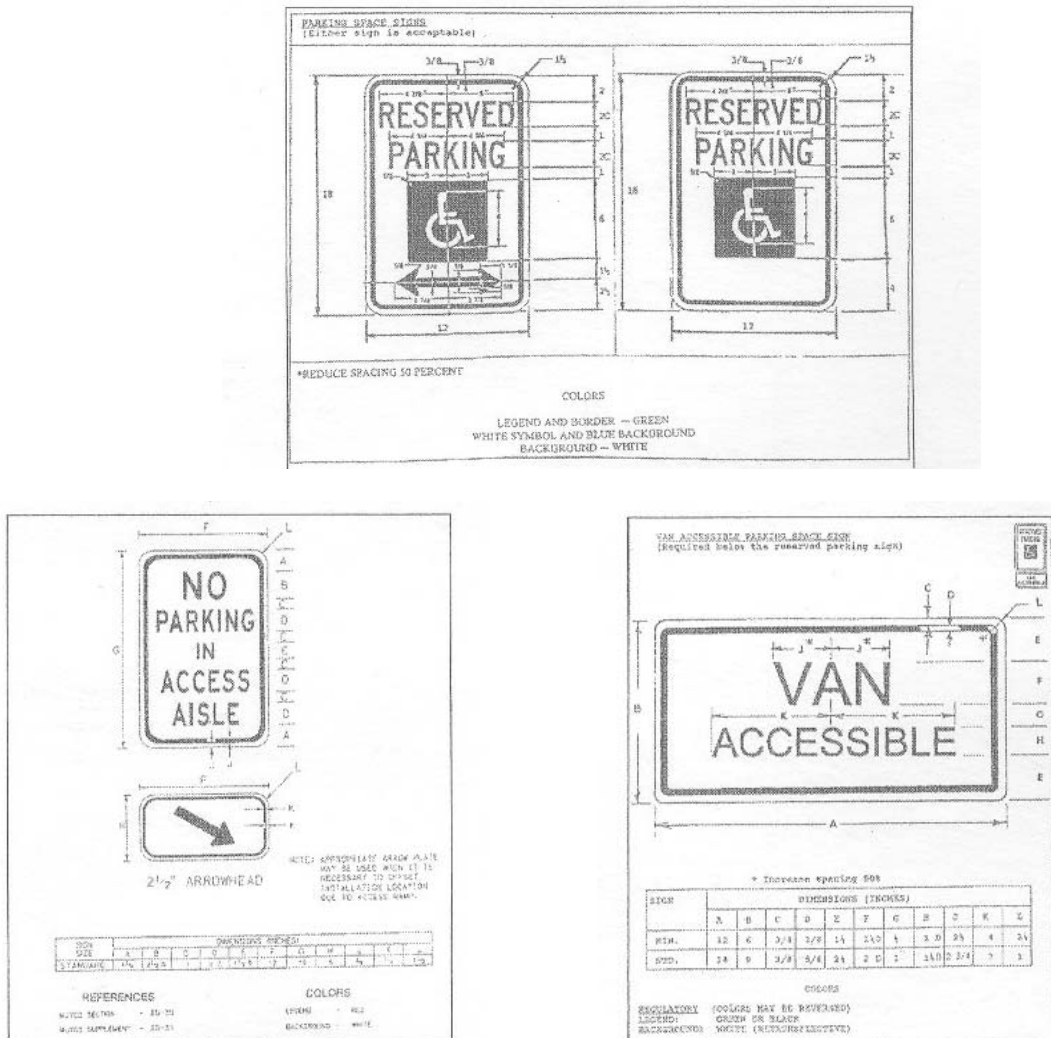
### Site Plan, Ex. 30(a), site graphics



Staff notes that appropriate signage is provided for on the Site Plan, as shown below, and that the location of the accessible space close to the dwelling ensures that individuals with disabilities would not have to cross a vehicular lane to get to the building. *Id.* Staff also finds the

parallel parking space adjacent to the house, which is shown with dimensions of 7 feet by 21 feet, is standard and adequate. *Id.*

### Parking Signage, excerpted from Site Plan, Ex. 30(a)

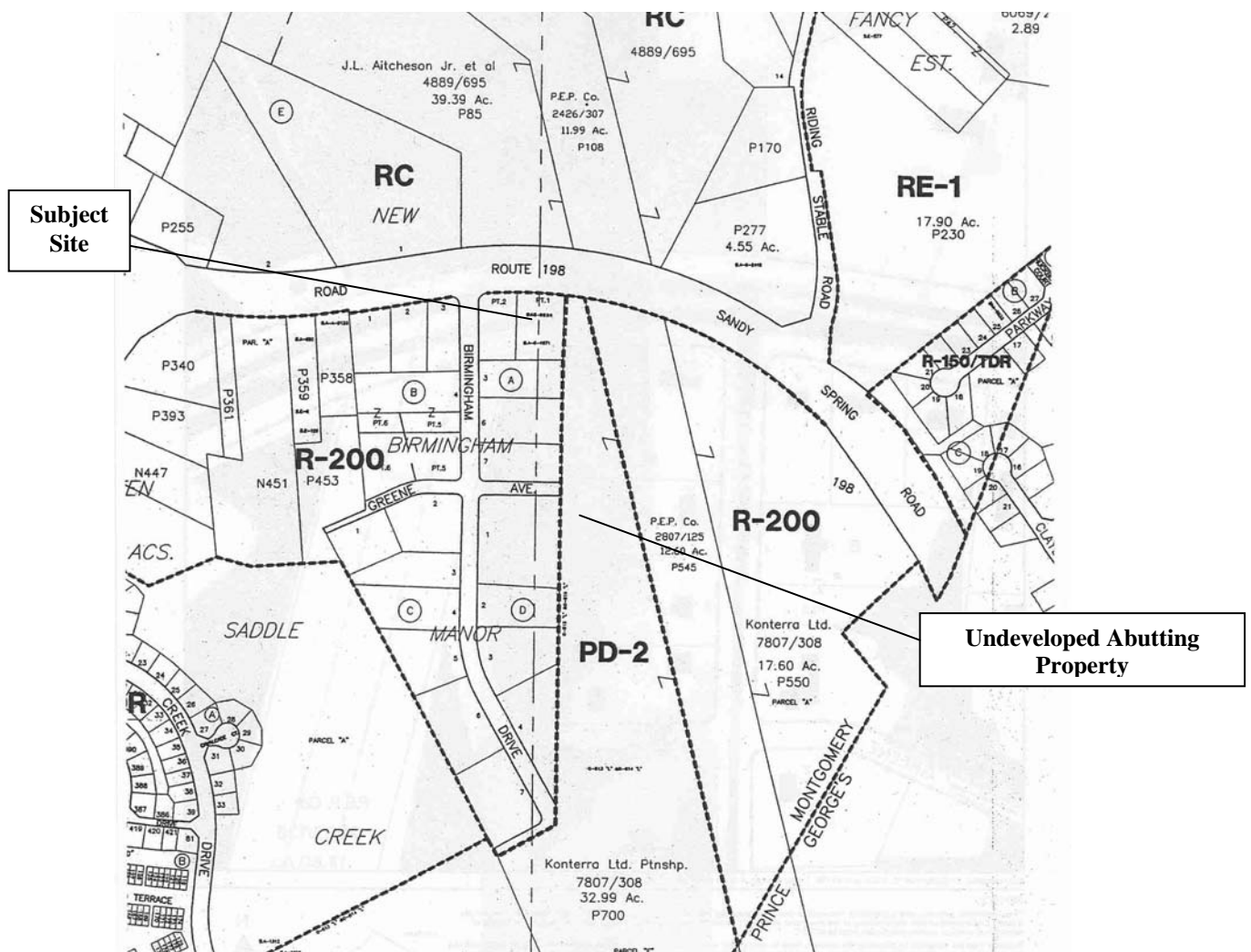


**Parking setbacks.** A special exception parking facility in a residential zone is required to be set back from the property lines by a distance not less than the front and rear building setback required in the zone, and twice the building side yard required in the zone. Code § 59-E-2.83(b). In the R-200 Zone, this means that the parking lot is required to be set back at least 40 feet from the street, 30 feet from the rear property line and 24 feet from the side property lines (with a minimum of 50 feet on both sides combined). The proposed site plan shows that the parking lot easily meets the setback

requirements from the street, the rear property line and the western property line, as well as the combined side yard setback. The property line is located only 12 feet from the eastern property line, however, and Petitioner has requested a waiver of the 24-foot side yard setback to allow her to keep her driveway and parking area in their current locations. See Ex. 27(g), letter to adjoining property owners informing them of parking setback waiver request.

As noted earlier, to the east, the subject site abuts undeveloped property that was classified under the PD-2 Zone as part of a substantial rezoning of land related to the nearby Fairland Golf Course. The particular area of land abutting the subject property is not slated for construction under the Development Plan that was approved as part of the rezoning. This is, in all likelihood, due to its very small size and narrow shape, which are best seen on the zoning map reproduced below.

### Zoning Map, excerpted from Staff Report



The owner of the abutting property to the east, Konterra Limited Partnership, has indicated in writing that it has no immediate plans to develop the property between the subject site and the PEPCO property, and has no objection to the requested parking setback waiver. See Ex. 27(h). Technical Staff supports the waiver request, noting that the abutting land to the east appears to be non-buildable. Ex. 30 at 4.

The Board of Appeals has authority under Section 59-E-4.5 of the Zoning Ordinance to waive any requirement of Chapter 59 that is “not necessary to accomplish the objectives in Section 59-E-4.2.” These objectives are set forth below:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.
- (b) The safety of pedestrians and motorists within a parking facility.
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.
- (d) The provision of appropriate lighting, if the parking is to be used after dark.

Given that the only property directly affected by the proposed parking setback waiver appears to be non-buildable, as well as the existing mature vegetation along the relevant property line and additional landscaping shown on the submitted plans, the Hearing Examiner concludes that a 24-foot parking lot setback along the eastern property line of the subject site is not necessary to accomplish the objective listed above. The requested 12-foot waiver would have no effect on safety, circulation and lighting, and any visual impacts would be mitigated by the existing and proposed landscaping.

Photographs of the existing parking facility are provided below.

**Parking Area View Looking Southwest, Ex. 26(a) top photo**



**Proposed Handicapped Parking Space, with View to West, Ex. 26(a) bottom photo**



**Brick Planter Along Western Edge of Parking Area, Ex. 26(b) bottom photo**



**View from Brick Planter to Eastern Property Line, Ex. 26(b) top photo**



**View from Parking Area to Western Property Line and Beyond, Ex. 9(d) bottom photo**



**Location of Proposed Parallel Parking Space Along House, Ex. 26(c) top photo**



A special exception parking facility is also required to be located so as to “maintain a residential character and a pedestrian-friendly street orientation.” Code § 59-E-2.83(a). Technical Staff did not directly address this requirement, but the Hearing Examiner finds that the proposed site plan satisfies it, because the parking facility is not readily visible from the street, and would be even less visible with the additional landscaping shown on the Site Plan.

A special exception parking facility must have enough trees to shade at least 30 percent of the paved area, including driveways. Code § 59-E-2.83. Neither Technical Staff nor Petitioner directly addressed this requirement, but the Hearing Examiner finds that the heavy existing vegetation along the eastern property line, as well as large deciduous trees not far from the northern end of the parking lot, are sufficient to conclude that this requirement is met. See photos above.

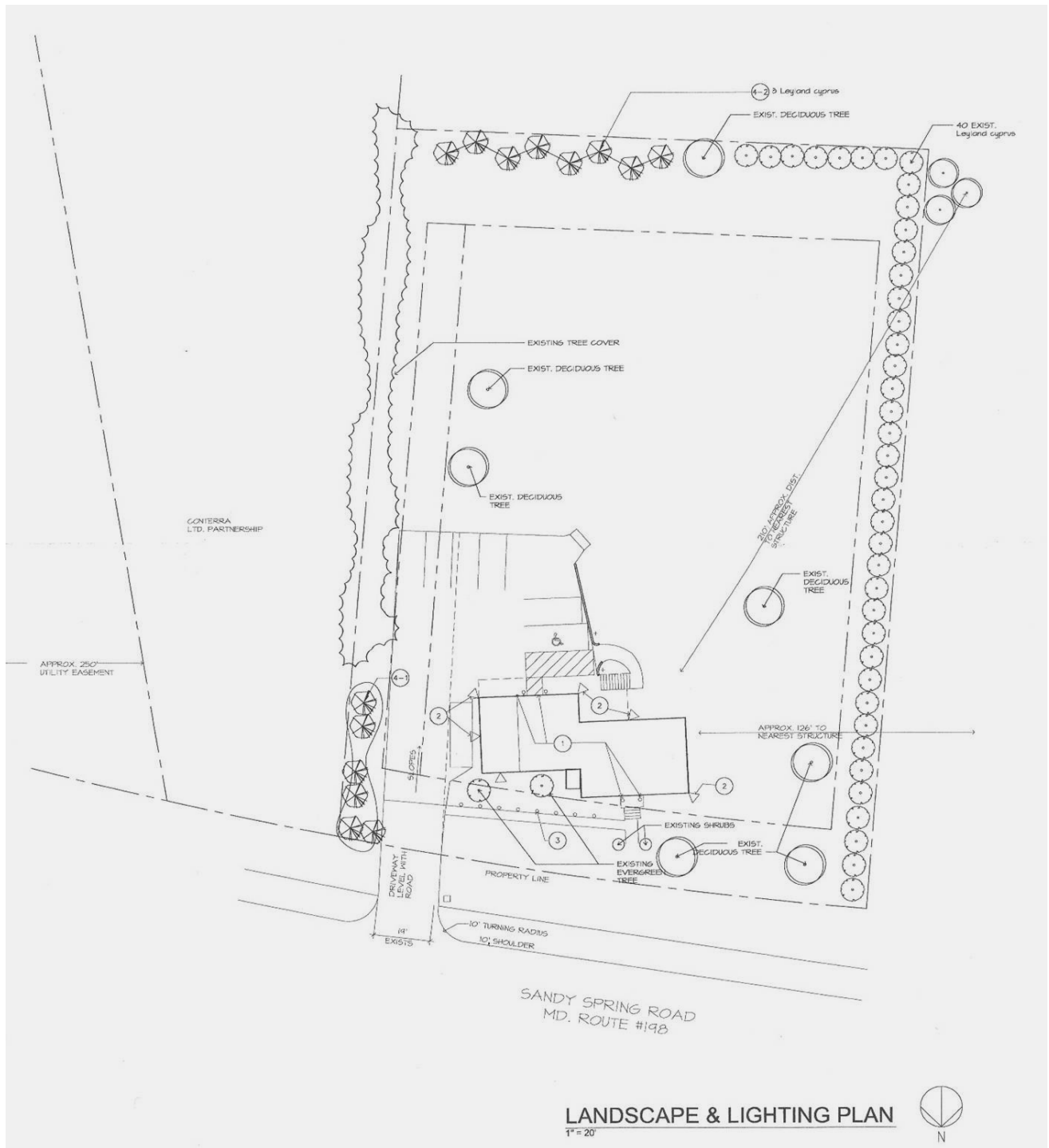
### ***E. Landscaping and Lighting***

The subject site has grass, trees and other landscaping throughout. As shown on the landscape and lighting plan on the next page, a dense stand of mature trees straddles most of the eastern property line. Where those trees end, about a third of the way through the parking lot, Petitioner proposes to plant a line of Leland Cypress, to be six feet tall at planting. The Leland Cypress would extend to the northern property line, along MD 198. A row of 40 existing Leland Cypress trees is identified along the western property line and part of the southern property line, which Technical Staff describes as about five feet tall. Where these trees end, in about the middle of the southern property line, there is a large, deciduous tree. There are also two other large, deciduous trees closer to the parking lot.

Aside from the wooded area east of the subject site, the general neighborhood has a mostly open feel, with large vistas. Petitioner’s neighbor to the south/southwest, John Bechtoldt, has requested that Petitioner not be required to plant trees along her southern property line, because he enjoys the open land between her property and his. See Ex. 27(k). Mr. Bechtoldt notes that his house is located close to Birmingham Drive, at the western end of his lot, so he cannot see Petitioner’s parking lot from his home. The Site Plan indicates that the parking lot on the subject site is



approximately 200 feet from the nearest structure on Mr. Bechtoldt's property (which appears to be an accessory building) and well over 100 feet from the nearest structure on the property directly to the west. Petitioner has, nonetheless, proposed a row of staggered Leland Cypress trees, six feet tall at planting, which would fill in the rest of her southern property line. These features can be seen on the Landscape and Lighting Plan, shown below.

**Landscape and Lighting Plan, Ex. 30(b), graphics only**



**Plant List and Lighting Key, from Ex. 30(b)****LIGHTING KEY**

- ① □ 60 WATT INCANDESCENT WALL SCONCES (4 LIGHTS TOTAL)  
 ② △ 150 WATT PAR 30 FLOOD LIGHTS (6 LIGHTS TOTAL)  
 ③ ○ SOLAR POWERED DUSK TO DARK LIGHTS (8 LIGHTS TOTAL)

PLANT LIST							
	CODE	QUANTITY	GENUS	SPECIES	VARIETY	COMMON NAME	DESCRIPTION
	4-1	6	<i>Cupressocyparis</i>	leylandi	6' HIGH @ PLANTING	Leyland Cypress	10' O.C.
	4-2	8	<i>Cupressocyparis</i>	leylandi	6' HIGH @ PLANTING	Leyland Cypress	STAGGERED

Technical Staff reports that Ms. Ramson decided to plant these trees along the southern property line “to meet the screening standard and to avoid having to erect a fence.” The screening standard in question is in Section 59-E-2.83, which requires that special exception parking facilities in residential zones be “effectively screened from all abutting lots” with screening that is compatible with the area’s residential character. The section specifies that screening must be at least six feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of same.

The Hearing Examiner considers Ms. Ramson’s proposal to plant tall evergreens along the part of her southern property line that is now open to be unfortunate. In sunny conditions such as apparently exist along the southern border of this site, Leland Cypress will quite rapidly grow upwards of 30 feet tall, forming a substantial visual block. Given the significant distances between Petitioner’s parking lot and neighboring properties, existing vegetation, and the relatively low level of activity in the parking lot, there is no objective need for additional screening. Moreover, if Petitioner were truly concerned about screening just the parking area, she could propose plantings along the edges of the

parking area, rather than along the property line, which would not impede the view of open land that Mr. Bechtoldt mentions.

In past cases, Technical Staff have recommended against requiring six-foot screening where doing so would not be compatible with the existing character of a residential neighborhood. This approach is consistent with the Section 59-E-2.83, which requires that screening be accomplished in a manner that is “compatible with the area’s residential character.” Moreover, as noted above, the Board has the authority to waive any requirement of Chapter 59E, including the screening requirements of Section 59-E-2.83. If Ms. Ramson should suggest that she is inclined to change her plans again, to eliminate the Leland Cypress proposed along the southern property line or replace them with smaller evergreens, with a maximum height closer to six feet, the Hearing Examiner would recommend that the Board welcome such a change, either by interpreting it to be compatible with the existing character of the neighborhood, or by granting a waiver from Section 59-E-2.83(c), after proper notice per Section 59-E-4.5.

Turning to exterior lighting, the Landscape and Lighting Plan shows the following existing lighting: four wall sconces with 60-watt incandescent bulbs, two near each of the front and back entrances to the house; six 150-watt flood lights located at the corners of the house and along the driveway, including at least two that light the parking area; and eight solar-powered dusk-to-dawn lights along the walkway from the driveway to the front door. Technical Staff opined that there would be no objectionable lighting or glare.

#### ***F. Development Standards***

As shown in the table below, excerpted from the Staff Report, the existing building complies with all applicable development standards. Development standards applicable to the parking lot are discussed in detail in Part II.D. above.

### **Development Standards**

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>
Minimum Net Lot Area	20,000 sq. ft.	36,396 sq. ft.
Minimum Lot Width at Front Building Line	100 ft.	Approx. 156 ft.
Minimum Lot Width at Street Line	25 ft.	Approx. 167 ft.
Minimum Setback from Street	40 ft.	24 ft. due to taking <sup>5</sup>
Minimum Side Yard Setback	12 ft. (sum 25 ft.)	41 ft. (sum 100 ft.)
Minimum Rear Yard Setback	30 ft.	Approx. 180 ft.
Maximum Building Height	50 ft.	Less than 50 ft.
Maximum Lot Coverage	25 %	Less than 25%

### **G. Traffic and Environment**

Transportation Planning Staff at MNCPPC has determined that based on the Planning Board's Local Area Transportation Review ("LATR") Guidelines, the proposed use does not require a traffic study, because it would generate fewer than 30 trips during the morning and evening peak hours. Accordingly, the use would satisfy LATR requirements. See Transportation Planning Staff memorandum dated July 18, 2005, attached to original Staff Report, Ex. 22. Transportation Planning Staff found, further, that the proposed use would have no adverse effects on area transportation facilities, with two conditions: (1) that Petitioner satisfy any relevant SHA design requirements for the driveway entrance; and (2) that Petitioner satisfy any relevant requirements of the Montgomery County Department of Public Works and Transportation and Department of Permitting Services regarding on-site parking and traffic circulation requirements. See *id.* These requirements were not carried forward as conditions of approval recommended in the Staff Report as a whole. The first is effectively satisfied, in the Hearing Examiner's view, by the waiver Petitioner obtained from SHA for her driveway entrance; if SHA is satisfied that the entrance is safe, the Hearing Examiner considers that to be sufficient probative evidence on the point, absent any contradictory evidence.

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<sup>5</sup> The front setback is deemed to be conforming, per Section 59-G-4.25, because the lot size was reduced due to a taking for road widening. Staff Report at 15.

Transportation Planning Staff's second recommended condition is addressed by the Hearing Examiner's recommended condition requiring Petitioner to apply for a use and occupancy permit. The issuance of such a permit will, presumably, require the Department of Permitting Services to verify that the site layout, including parking and traffic circulation, satisfies all applicable legal requirements.

The present petition is exempt from forest conservation requirements because it proposes no construction activities and no forest or individual trees would be disturbed. See Ex. 7.

### ***H. Community Participation***

In addition to Mr. Bechtoldt's letter requesting that Petitioner not be required to plant trees along her entire southern property line, the record contains brief letters from Mr. Bechtoldt and from Jesus and Ana Mata, who live immediately adjacent to the subject site to the west. See Exs. 19(a) and (b). Each of these letters states that the writers have no opposition to the proposed special exception. The record reflects no other community participation.

## **III. SUMMARY OF HEARING**

Ms. Ramson was the only witness on her behalf. She testified about the properties surrounding the subject site, which include one home to the west, one to the southwest and undeveloped property to the east. Ms. Ramson was unclear about the ownership of the property immediately abutting hers to the east, but Sandra Youla, MNCPPC Zoning Analyst, stated that the abutting property is under private ownership and was part of the Fairland Golf Course rezoning. The property is oddly shaped, with only a narrow area actually abutting the subject property. Beyond that narrow area are utility lines that sit on property owned by PEPCO. Ms. Ramson believes that in light of setback requirements, it would not be possible to build on the narrow strip of private property between the subject site and the PEPCO property. Moreover, she has discussed the matter with Barbara Sears, Esq., counsel to the owners of the narrow strip of land, who informed her that no building is planned for that area. Ms. Youla agreed that any construction on that strip of land is unlikely, given its dimensions.

The Hearing Examiner reviewed with Ms. Ramson each of the deficiencies noted in the Staff Report, to ensure that her revised submissions would be satisfactory. Ms. Ramson confirmed that most of the suggested operating conditions are consistent with the way she operates, with the exception of the limitation of two non-residential employees, which is discussed further below. Tr. at 101-102. She noted that occasionally, she has an appointment earlier than 10:00 a.m., so she suggested the starting time be changed to 9:00 a.m. Ms. Youla indicated that she would find that acceptable.

Ms. Ramson presented photographs to show where the required eight parking spaces would be located, including one handicapped-accessible space and one space parallel to the house. She indicated an intention to paint stripes to demarcate the parking spaces.

Regarding which parts of her home are used in connection with the office use, Ms. Ramson stated that her staff uses a water cooler that is located in the kitchen, but that's the extent of it. She has a separate, smaller refrigerator for staff to use, and they do not eat their lunches in the kitchen. Later submissions indicate that the water cooler has been moved out of the kitchen to the copy/mail area.

There was considerable discussion about ADA requirements, an issue that was raised in the Staff Report. Ms. Ramson indicated that when she learned of this issue and realized, in early September, that she would need a professional architect to address it, she hired one. The Hearing Examiner agreed to hold the record open to allow Ms. Ramson to consult with her architect as to whether any requirements of the ADA apply, and to prepare a revised site plan and an accurate floor plan identifying which areas of the home are used for business purposes. Technical Staff suggested that some interior ADA requirements might also apply. The People's Counsel argued, and the Hearing Examiner agreed, that such requirements need not be addressed on the revised site plan, and that certification of ADA compliance by the architect would be sufficient. Tr. at 78-82.

Ms. Ramson adopted the Staff Report as part of her evidence in this case.

Turning to her driveway, Ms. Ramson stated that she had not yet made a formal request for a waiver from SHA of the driveway entrance requirements, but she had discussed it with them. She

noted that the driveway was in existence when she bought the house, and in her ten years there, there has never been an accident in front of her property. Ms. Youla recommended that Ms. Ramson submit to SHA, with her waiver request, a site plan showing the road profile (showing from the midpoint of the road what's paved, whether there is a median, whether there is a shoulder, where the right-of-way line is, and where the driveway is). She suggested that the site plan should also show the parking facility, so that SHA can assess whether the access is adequate. Tr. at 56-57. All parties agreed that the site plan submitted before the hearing was not sufficiently detailed for this purpose.

There was considerable discussion about other elements that should be shown on the site plan, such as existing landscaping and a legend, as well as lighting fixtures not shown on the submitted lighting plan.

Ms. Ramson testified that she does not propose any signage. Ms. Youla stated that the Staff Report recommended a sign stating that clients are seen by appointment only. Ms. Ramson stated that her preference is not to have a sign at all, because lawyers who have signs tend to get a lot of drop-in traffic from people seeking help in areas of the law outside that particular lawyer's expertise.

With regard to the recommended condition that there be no more than two non-resident employees on site per day, Ms. Ramson said that covers her paid employees, but sometimes students from nearby high schools work with her on a part-time, volunteer basis, after school, to get experience in a law office. She noted that they have always been dropped off and picked up by a parent, rather than driving their own cars. The Hearing Examiner suggested that Ms. Ramson spell out how that works in her statement of operations, e.g. how many students per day, how many times per week, and a commitment that they will not drive to the site, which would generate additional parking demand. Ms. Youla stated that because on-street parking is not allowed, Staff would hope not to encourage temporary parking in the right-of-way. In response to this suggestion that part-time student interns would generate an additional parking requirement, Ms. Ramson stated her intention to stop permitting interns, rather than getting involved in another complicated issue. Tr. at 101. The Hearing Examiner finds this decision regrettable, because the potential traffic impacts could be resolved with a condition

specifying that interns must be dropped off at the site, or arrive on foot, by public transportation, or by other means that do not require parking a vehicle on site. If Ms. Ramson should request to amend her Statement of Operations to provide for interns, the Hearing Examiner recommends that the Board allow her to do so, with the specified condition.

#### **IV. CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

##### ***A. Standard for Evaluation***

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational

characteristics are necessarily associated with a major home occupation. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff did not identify or evaluate inherent and non-inherent characteristics of a major home occupation. The Hearing Examiner finds that physical and operational characteristics necessarily associated with a major home occupation include a residence large enough to accommodate a residential use and a non-residential use; sufficient parking space for residents, employees, and clients, if any; adequate exterior lighting for security and safety; vehicular trips to and from the site generated by employees, clients (if any) and deliveries; and hours of operation during normal business hours. In the present case, the only operational element that could be considered non-inherent is the hours of operation, which extend beyond standard working hours during the week, and include Saturday mornings. Given the low intensity of the use, and the fact that the only outside activities are arrivals and departures, the Hearing Examiner considers the effect of these extended hours to be minimal. The office would close by 7:00 p.m., which is early in the evening, and would be open for only three hours on Saturday, which is not a significant imposition on the neighbors. Moreover, evening and Saturday appointments would be scheduled only when needed, not on a daily basis. In general, the non-resident employees would leave by 5:30 and the level of activity would drop at that point.

Most of the physical characteristics of the site and the proposed use are inherent: there is nothing unusual in the size of the home; the parking area is not so large as to destroy the residential character of the site, particularly in comparison to the amount of green, open space around it; exterior lighting is residential in nature and not obtrusive; and the amount of traffic expected is a fairly low

volume, spread out during the course of the day. The only physical characteristic that must be considered non-inherent is the request for a parking setback waiver, which is neither typical nor to be expected. However, as discussed in more detail in Part II.D above, the requested waiver would have no discernible impacts on the general neighborhood because the abutting land appears to be non-buildable and, in any event, would be buffered by existing and proposed vegetation.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the present proposal includes no non-inherent adverse effects that warrant denial.

### ***B. Specific Standards***

The specific standards for a major home occupation are found in §59-G-2.29. The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence to support a conclusion that, with the recommended conditions of approval, the proposed facility would be consistent with these specific standards, as outlined below.

#### **Sec. 59-G-2.29. Home occupation, major.**

The use of a dwelling for a major home occupation, including a professional or home health practitioner's office that is not in accordance with Sections 59-A-3.4 and 59-A-6.1, may be allowed, subject to the following provisions:

- (a) The use must be clearly subordinate to the use of the dwelling for residential purposes. The amount of floor area used for the major home occupation must not exceed 33 percent or 1,500 square feet, whichever is less, of the total floor area of the dwelling unit and any existing accessory building on the same lot or parcel. Any enlargement of the total floor area resulting from construction completed on or after the date of application for the special exception or within 18 months immediately preceding the application must be excluded from the total floor area on which this calculation is based.

**Conclusion:** As shown on the submitted floor plans, Ex. 30(c), the proposed home occupation would occupy approximately 772 square feet of the building, equal to about 20 percent of the total floor area of 3,850 square feet. The subject site has no accessory buildings, and there is no evidence of recent construction activities.

- (b) The use must be conducted within the dwelling unit or any existing accessory building and not in any open yard area of the lot or parcel on which the dwelling is located. Exterior storage of goods or equipment is not permitted. No separate detached building may be constructed on the lot or parcel for the express

purpose of specifically operating the home occupation. No more than one existing accessory building may be used for this purpose. The use may, however, involve off-site activities such as sales, client contact and other matters related to the home occupation.

Conclusion: The proposed law office would operate indoors. No exterior storage of goods or equipment would take place on site, nor is any separate, detached building existing or proposed.

- (c) The Board may grant a special exception for a major home occupation on the same property as a registered home occupation, if it finds that both together can be operated in accordance with the provisions of this section and Section 59-G-1.2, title "Conditions for Granting." The Board must not grant a special exception for more than one major home occupation on the same property or approve such a use if the property is also approved for a different special exception in accordance with this Division 59-G-2.

*Not applicable.*

- (d) The home occupation office must be conducted only by members of the family, as defined in Section 59-A-2.1, residing in the dwelling and a maximum of 2 nonresident employees or associates to be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic. The Board may allow more than 2 nonresident employees for a health practitioner's practice; however, no nonresident health practitioner is allowed. In any case where customers, clients or patients visit the dwelling, there must be no more than 2 resident operators of the home occupation or 2 resident health practitioners or other professionals practicing in the dwelling; abuse of this exemption may lead to revocation of the Certificate of Registration.

Conclusion: The only personnel Petitioner proposes are herself and two non-resident employees. The evidence supports a finding that two non-resident employees may be permitted without any noticeable impact on neighboring residences. The neighbors are buffered by distance and vegetation, and the level of activity on site would be low, even with two non-resident employees.

- (e) Clients, customers, patients or other visitors in connection with the home occupation must visit by appointment only. The Board may specify the hours during which they may visit and may limit the number of clients, customers, patients, or other visitors during those periods. An indoor waiting room must be provided. In the case of a home health practitioner, as defined in Section 59-A-2.1, emergency patients may visit outside the specified hours or without appointment; abuse of this exemption may lead to revocation of the special exception.

Conclusion: The Statement of Operations provides for client visits by appointment only and lists specifically the hours during which appointments would be scheduled. A recommended

condition of approval would require a written log of all arrivals and departures associated with the home occupation. The floor plan shows an ample waiting room at the front of the house.

- (f) No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference detectable at or beyond the lot line is allowed as part of the special exception activity, nor is it allowed to involve use, storage or disposal of:
  - (1) A quantity of a petroleum product sufficient to require a special license or permit from the fire marshal; or
  - (2) Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated as provided in Maryland State Laws and Regulations.

Conclusion: No such activities are proposed.

- (g) The only allowable equipment or facilities are those needed for:
  - (1) Domestic or household purposes;
  - (2) General office purposes, such as but not limited to a personal computer, calculator, word processor, or typewriter; or
  - (3) Art or handicraft equipment, such as but not limited to a hand loom, spinning wheel, kiln, or woodworking tools.
  - (4) In the case of a home health practitioner, as defined in Section 59-A-2.1, medical equipment may also be used, subject to the provisions of Paragraph (f), above.

Conclusion: Petitioner proposes to use only general office equipment for the home occupation.

- (h) The sale of goods on the premises is prohibited, except for:
  - (1) The products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or handicrafts performed by a resident of the dwelling; or
  - (2) No more than 5 sales per month of items customarily ordered for delivery to customers at off-site locations.

Conclusion: No sale of goods is proposed.

- (i) Display or storage of goods is prohibited except for:
  - (1) Such handmade items as are enumerated in paragraph (h)(1) above; or

- (2) Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.

The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.

Conclusion: No display or storage of goods is proposed.

- (j) Except as provided in Paragraph (2), off-street parking must be provided on-site in accordance with the relevant provisions of Article 59-E, as follows:

- (1) For a home health practitioner, the Board may require the number of spaces specified in Section 59-E-3.7 for "office, medical practitioner." Alternatively, and for any other use encompassed by this Section 59-G-2.29, there must be one parking space for each nonresident employee or associate plus one parking space for every client or customer allowed by the conditions of the special exception to visit in any one-hour period. These spaces must be in addition to the number of spaces required for the residential use of the property.

Conclusion: The required eight spaces would be provided on site, in a parking area to the rear of the dwelling. These include three spaces for residential use; two for the non-resident employees; two for clients, because Petitioner anticipates up to two clients within a one-hour period; and one for deliveries.

- (2) In determining the necessary amount of on-site parking, the Board may take into account the availability of on-street parking spaces, but on-street parking must not be allowed in connection with the home occupation or professional office if it will have an adverse impact on neighboring residences.

Conclusion: On-street parking is not permitted on Sandy Spring Road and is not proposed in connection with the proposed special exception.

- (3) Screening must be provided in accordance with Section 59-E-2.83. The required spaces must be located in the side or rear yard, except that the Board may approve parking in a driveway traversing the front yard if it finds that there is inadequate space for the parking or necessary screening in the side or rear yard, and the front-yard driveway can be screened in accordance with Section 59-E-2.83. If an applicant can establish, to the satisfaction of the Board, that a front-yard parking area was constructed prior to February 5, 1990, in order to satisfy the parking requirements for a residential professional office as a permitted use, the Board may waive the requirement for side or rear yard parking if it finds that such action will not have an adverse impact on neighboring residences.

Conclusion: All parking would be in the rear yard. The submitted Landscape Plan, Exhibit 30(b), provides for evergreen screening along the rear and side property lines, which would screen the view of the parking area from neighboring properties. As noted in Part II.E above, Petitioner's neighbor to the southwest would prefer not to have additional trees planted along the southern border, because he enjoys the current view of open space. Given the substantial distances between Petitioner's parking lot and neighboring properties, existing vegetation, and the relatively low level of activity in the subject parking lot, there is no objective need for additional screening. In the Hearing Examiner's view, the additional Leland Cypress shown on the Landscape Plan along the southern property line detract from the compatibility of the proposed use, rather than supporting it. The general character of the neighborhood involves a substantial amount of open space, the view of which would be cut off by evergreens that are capable of reaching heights upwards of 30 feet in the space of a few years.

In past cases, Technical Staff have recommended against requiring six-foot screening where doing so would not be compatible with the existing character of a residential neighborhood. This approach is consistent with the Section 59-E-2.83, which requires that screening be accomplished in manner that is "compatible with the area's residential character." Moreover, as noted above, the Board has the authority to waive any requirement of Chapter 59E, including the screening requirements of Section 59-E-2.83.

If Ms. Ramson should request to change her plans to eliminate the Leland Cypress proposed along the southern property line, or replace them with smaller evergreens, with a maximum height closer to six feet, the Hearing Examiner would recommend that the Board welcome such a change, either by interpreting the change to be compatible with the existing character of the neighborhood, or by granting a waiver from Section 59-E-2.83(c), after proper notice per Section 59-E-4.5.

- (k) In the Residential One-Family Zones regulated by Section 59-C-1.3 and in recorded residential subdivisions in the Agricultural Zones regulated by Division 59-C-9, any commercial vehicle that is parked or garaged on-site in connection with the home occupation must comply with the regulations for commercial

vehicles in section 59-C-1.31, title "Land Uses." In the Townhouse and Multiple-Family Zones regulated by Sections 59-C-1.7 and 59-C-2.3, respectively, one commercial vehicle may be parked on-site in connection with the home occupation if parked in a garage.

Conclusion: No commercial vehicle usage is proposed. Petitioner is, nonetheless, required to comply with the cited provisions, regardless of whether the special exception is granted.

- (l) The Board may restrict deliveries by truck in volume and frequency and may limit them to deliveries by public or private services that also deliver to private homes.

Conclusion: The proposed conditions of approval would limit deliveries to no more than two per day, excluding United States mail and residential garbage/recycling pick-up, with deliveries to be made by public or private services that also deliver to private homes.

- (m) Reserved.

- (n) A special exception for a major home occupation is granted for a two-year period and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies the compliance procedures specified by Section 59-G-1.3. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the conditions established by the Board of Appeals and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.

*Petitioner must comply with this provision if the special exception is granted.*

- (o) In those zones where a professional office for a resident of a dwelling was permitted by right prior to February 5, 1990, and if a use-and-occupancy permit for the professional office was issued prior to February 5, 1990, the office may be continued as a nonconforming use, as provided in Division 59-G-4. (See Section 59-C-1.31, 59-C-2.3 or 59-C-9.3.)

*Not applicable.*

### **C. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

**Sec. 59-G-1.21. General conditions:**

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A major home occupation is a permitted use in the R-200 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.29, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports a conclusion that the proposed use would be consistent with the *1997 Approved and Adopted Fairland Master Plan*.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The proposed facility would have no effect on population density, no new structures, a low intensity of activity, a negligible impact on traffic, and no effect on off-site parking. There is no evidence of any similar uses in the area. Accordingly, the Hearing Examiner concludes that the proposed use would be in harmony with the general character of the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, due to its low levels of activity, minimal exterior activity and significant buffering in the form of distances and landscaping.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that due to the nature of the office activities involved in the proposed use and the fairly small amount of traffic that would be generated, the proposed use would cause no objectionable noise, vibrations, fumes, odors, dust or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff reports that there are no special exceptions in the general neighborhood. In light of the low intensity of activity involved in the proposed use, the Hearing Examiner concludes that the proposed use would not increase the number, intensity, or scope of special exception uses in the area sufficiently to affect the area adversely or alter its predominantly residential character.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed use.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. The proposed use would generate far fewer than 30 vehicular trips during the weekday peak hours, so it is not subject to Local Area Transportation Review requirements. Policy Area Transportation Review requirements no longer apply, per the current AGP Policy Element.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The preponderance of the evidence supports a conclusion that with the removal of the brick mailbox structure, the proposed use would have no discernible effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that Petitioner has met the burden of proof and persuasion.

### **59-G-1.23 General Development Standards**

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles. Furthermore, under Section 59-G-1.23(g), any structure constructed under a special exception in a residential zone “must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.” Under Section 59-G-1.26, a structure constructed pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted, and must have suitable landscaping, streetscaping, pedestrian circulation and screening.

Conclusion: As shown in the table on page 26, the proposed development would satisfy all applicable development standards of the R-200 Zone. The eight on-site parking spaces required under Chapter 59-E and Section 59-G-2.29(j) already exist, and are to be delineated with striping and signage. The proposed development is exempt from forest conservation requirements, and no signage is proposed. No changes are proposed to existing exterior lighting, which is residential in nature and not obtrusive. Petitioner was not required to supply photometrics because it is evident that the residential-style lighting proposed is appropriate for the site. No new structures are proposed, and the existing building is residential in character, with suitable landscaping and screening.

## V. RECOMMENDATIONS

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2634, which requests a special exception under Section 59-G-2.29 for a major home occupation, to be located in Petitioner's residence at 4705 Sandy Spring Road, Burtonsville, MD 20866, known as Lot P1, Block A, New Birmingham Manor subdivision, Tax Account No. 160500273774, in the R-200 Zone, be **granted** with the following conditions:

1. Petitioner shall be bound by all of her testimony and exhibits of record, including the final Site Plan, Exhibit 30(a), Landscape and Lighting Plan, Exhibit 30(b), and Floor Plans, Exhibit 30(c).
2. Hours of operation shall be limited to 9:00 a.m. to 7:00 p.m. Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturdays. Appointments shall typically begin no earlier than 10:00 a.m. and no later than 5:00 p.m. on weekdays, but may begin as early as 9:00 a.m., or after 5:00 p.m., if necessary. Weekday appointments shall end no later than 7:00 p.m. Saturday appointments shall begin no earlier than 9:00 a.m. and end no later than noon. Abuse of this condition will be considered a violation of the terms and conditions of this special exception.
3. The major home occupation shall have no more than two non-resident employees on site per day, regardless of whether they are on site simultaneously, sequentially, or in overlapping fashion. Non-resident employees shall typically be on site from 8:30 a.m. to 5:30 p.m. on weekdays, but may stay as late as 7:00 p.m. when necessary. Abuse of this condition will be considered a violation of the terms and conditions of this special exception.
4. Clients and other visitors in connection with the home occupation must visit by appointment only, including but not limited to outside legal, accounting, and repair services, but excluding the non-resident employees referenced in Condition 3 and

- deliveries reference in Condition 6. No more than 12 appointments shall be scheduled per weekday and no more than four per Saturday.
5. Petitioner must maintain a written log of all arrivals and departures associated with the major home occupation, including employees, business associates, clients, other visitors, deliveries and pickups. The log must show names, appointment times, and arrival and departure times. The log must be available for inspection by county authorities at all times.
  6. Deliveries to the site shall be limited to no more than two per day, exclusive of United States mail and residential garbage/recycling pick-up. Deliveries to the site shall be made only by public or private services that deliver to private homes.
  7. The existing brick mailbox structure in the front yard (which may be within the right-of-way for MD 198) must be removed within three months of the Board's opinion in this matter, and must be replaced with a breakaway-type post or support. The maximum size permitted for a wooden post will be 4 inches by 4 inches, and the maximum size permitted for a pipe support will be 2 inches in diameter.
  8. The parking area shall be striped to show the locations of the seven outside parking spaces, and appropriate signage shall be installed per the Site Plan, Exhibit 30(a).
  9. Per Section 59-A-3.22 of the Zoning Ordinance, Petitioner must apply for a use and occupancy permit from the Montgomery County Department of Permitting Services within six months of the Board's Opinion in this matter, and must submit to the Board, for its records, (i) a copy of the use and occupancy permit; and (ii) written indication of whether Petitioner was required to actually construct the handicapped-accessible facilities shown on the floor plan to obtain a use and occupancy permit.<sup>6</sup>

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<sup>6</sup> As explained page 12, note 3, Petitioner objects to this condition on grounds that she has been told by staff at the Department of Permitting Services that it is not required. See Ex. 31. If she finds that she still gets this response when she points out that she has obtained a special exception for this home occupation, Ms. Ramson will need to provide that determination to the Board of Appeals in writing, and request modification of this condition. Based on the plain language of Zoning Ordinance Section 59-A-3.22, a use and occupancy permit appears to be required.

10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.<sup>7</sup>

Dated: April 7, 2006

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner

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<sup>7</sup> Petitioner objects to this condition as well, suggesting that it would be sufficient to state that "The applicant must comply with all relevant law." Ex. 31. She states that the People's Counsel agreed with her view on this issue. The Hearing Examiner must disagree. The language of this condition was crafted by the two hearing examiners in the Office of Zoning and Administrative Hearings and the Chair of the Board of Appeals to express, in a comprehensive fashion, the legal responsibilities of all special exception holders, and I believe it should be applied as written.